IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8815 OF 2005

The Regional Provident Fund Commissioner, Solapur. ... Petitioner

V/s

Shri Venkatesh Siddram Tapse ... Respondent

Mr. Suresh Kumar for the petitioner.

Ms. Manjiri Parasnis for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 16TH FEBRUARY, 2006

P.C.:

1. Heard both sides. Perused the record.

2. This petition is preferred by the petitioner institution against the award of the Member, Industrial Tribunal, Solapur, dated 26.7.2004 in a reference declaring that the petitioner had terminated the services of the respondent illegaly and without following due process of law.

3. The respondent filed the statement of claim contending that the petitioner was the body constituted

under the provisions of law and carried on business throughout India having its offices at various placed and engaged several employees for running the establishment. A post of watchman was vacant in the office of the Assistant Provident Fund Commissioner at Solapur and, therefore, respondent applied for that post on 17.5.1999. Thereafter with permission of the Regional Provident Fund Commissioner, Regional office, Maharashtra, the respondent was appointed by the petitioner on daily wages w.e.f. 24.5.1999 by order dated 21.5.1999. Thereafter, the petitioners terminated the services of the respondent by order dated 1.3.2001 w.e.f. 1.3.2001 itself. At that time, the respondent was getting salary of Rs.112/- per day from the petitioner. It was the case of the respondent that he had rendered continuous service with the petitioner from 24.5.1999 to 1.3.2001. According to him, he worked for 16 hours every day but he was not paid any extra wages or over time wages at any time. Also no notice before termination of service was given nor any retrenchment compensation was paid to him. According to the respondent, no seniority list was prepared or published by the petitioner and, as such, the petitioner contravened the mandatory provisions of Sec. 25(f), (g), (h) & (m) of the Industrial Disputes Act, 1947 and

Rule 81 of the Bombay Industrial Disputes Rules and thus it was alleged that order of termination of service was illegal, arbitrary and void ab-initio. Hence the respondent prayed for the said reliefs.

4. The petitioner challenged the contentions raised on behalf of the complainant inter-alia submitting that the allegations were not correct and the respondent was engaged on daily wages basis as stop-gap arrangement and, therefore, he was not entitled to the reliefs claimed.

5. The reference was adjudicated on merits by the learned Member of the Industrial Court. None appears on behalf of the petitioner and, therefore, the evidence of the respondent which was recorded in the course of hearing of the reference has gone unchallenged on record. It was held to be proved to the effect that the respondent had worked for more than 240 days in each calendar year and documents relating to the proceeding were with the petitioner. Evidently, no notice was issued to him before termination and no retrenchment compensation was paid. No seniority list was maintained and it was transpired that the petitioner had appointed another person on contract basis and the work is of

perennial in nature. The evidence of the respondent to the effect that he was entitled to full back wages on the ground that he was unemployed since termination has also gone unchallenged on record. On the basis of this factual matrix, reference came to be allowed and award was passed in the aforesaid terms.

6. At the outset, it may be noted that the entire evidence of the respondent which was recorded by the Member, Industrial Court, has remained unchallenged. There is no explanation whatsoever coming-forth from the petitioner as to why they did not challenge the evidence of the complainant nor any documentary evidence was produced to rebutt the complainant's allegations in this regard.

The learned counsel for the petitioner further submitted that the respondent was not entitled to full back wages as directed by the lower Court, for which purpose he sought to put reliance on the Apex Court judgment in the case of **General Manager Haryana Roadways v/s Rudhan Singh, reported in 2005 (2) S.C. Services Law Judgment, 166,** wherein the Apex Court has observed that there is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service

was in violation of Sec. 25-F of the Act, entire back wages should be awarded. The learned counsel for the petitioner also made reference to the another ruling of the Apex Court in the case of **Anil Kumar Gupta v/s. State of Behar, reported in (1996) 7 SCC 83,** wherein it is held that the order of payment of back wages should not be passed in mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.

7. In my considered view, there cannot be two opinions regarding the ratio laid down by the Supreme Court in the said case. However, the very ruling relied upon by the petitioner makes note of the fact that such aspects are taken into account while passing the order regarding payment of back wages. One of the important factor which has to be taken into consideration is the length of service which the employee has rendered with the employer. If the employee has rendered a considerable period of service and his services are wrongfully terminated, he may be be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him, he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very

small, the award of back wages of the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year. However, where the total length of service rendered by the workman is very small, the award of back wages of all complete period from the date of termination till the date or award is often quite large and, therefore, would be wholly inappropriate. Another important factor which requires to be taken into consideration is the nature of employment. The regular service of permanent character cannot be compared to short or intermittent daily wages employment so it may be for 240 days in a calendar year.

8. Therefore, keeping the criteria laid down by the Apex Court in view, I am of the considered opinion that the order passed by the learned Member of the Industrial Court is legal, just and proper and, therefore, cannot be interfered with. This is especially so when there is absolutely no evidence in rebuttal from the petitioner

to resist the allegations made in this regard. Under the circumstances, I hold that since the petitioner has failed to show that the order of the lower Court is perverse and the fact that the order in fact appears to be legal and proper, I do not wish to interfere in the said order.

9. In the result, the petition is devoid of any merits and, therefore, stands dismissed with no order as to costs.

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